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## Save Our Wetlands v. United States Army Corps of Eng'rs, No. 01-3472, 2002 U.S. Dist. LEXIS 1294 (E.D. La. January 15, 2002)

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Save Our Wetlands v. United States Army Corps of Eng'rs, No. 01-3472, 2002 U.S. Dist. LEXIS 1294 (E.D. La. January 15, 2002)

**Save Our Wetlands v. United States Army Corps of Eng'rs, No. 01-3472, 2002 U.S. Dist. LEXIS 1294 (E.D. La. January 15, 2002)** (holding that Army Corps of Engineers finding that a proposed development project would cause no significant impact to the environment was not arbitrary and capricious).

Save Our Wetlands brought a Motion for Preliminary Injunction to enjoin construction of a development project approved by the Army Corps of Engineers ("Corps"). Save Our Wetlands contended the Corps' finding that the project would have no significant impact on the environment was arbitrary and capricious, and sought an injunction.

On November 9, 2001, the Corps approved Stirling Slidell's permit to construct a development project on thirty-eight acres in the Bayou Liberty Basin of St. Tammany Parish, Louisiana. Prior to approving the project, the Corps prepared an environmental assessment ("EA") in compliance with the statutory requirements of the National Environmental Policy Act. In the EA, the Corps analyzed the project's direct and cumulative effects, alternatives to the development site, and mitigating measures that would decrease the project's negative effects. At the conclusion of its analysis, the Corps issued a finding of no significant impact ("FONSI") and approved Stirling's application.

Save Our Wetlands contended the FONSI was arbitrary and capricious because the Corps did not consider the direct, secondary and cumulative effects of the development on area flooding in the Bayou Liberty Basin. The court rejected Save Our Wetland's contention for four reasons. First, the Corps based its analysis of the project's effects on a study conducted by Duplantis Engineering, which the court found both comprehensive and conclusive. Second, none of the federal or state agencies that analyzed the project voiced any concern over its potential for increased flooding in the Bayou Liberty Basin. Third, the Corps' approval mandated the construction of a detention pond to control flooding. Fourth, the project was expected to provide economic benefits to the surrounding community, including funding for municipal improvements that would alleviate existing flooding in the area.

In the Fifth Circuit, a plaintiff must establish several requirements to prevail on a Motion for Preliminary Injunction. The plaintiff must prove a substantial likelihood of success in a trial on the merits of the case, a substantial threat of suffering irreparable injury if the injunction is denied, that the threatened injury outweighs the harm to the defendant, and that granting the injunction would serve the public interest.

The court held that because the FONSI was not arbitrary and capricious, Save Our Wetlands was unlikely to succeed on the merits of the case at trial. The court held that because the project did not create a significant chance of increased flooding, the project would not cause irreparable harm to Save Our Wetlands. Additionally, the

court held that an injunction would not serve the public interest. As a result, the court denied the Motion for Preliminary Injunction.

*Merc Pittinos*

**United States Pub. Interest Research Group v. Heritage Salmon, Inc., No. 00-150-B-C, 2001 U.S. Dist. LEXIS 13283 (D. Me. Aug. 28, 2001)** (holding associations asserting rights on behalf of members may establish standing where the individual members meet basic elements of standing).

In 2000, United States Public Interest Group (“USPIRG”) filed a citizen’s suit accusing Heritage Salmon, Inc. (“Heritage”), a salmon farm located in the vicinity of Cobscook Bay (“Bay”), Maine, of violating the Clean Water Act (“CWA”), and failing to obtain an NPDES permit. USPIRG sought a declaratory judgment that Heritage was in violation of an effluent standard or limitation under Chapter 26, Title 33 U.S.C. In addition, they sought civil penalties and an order enjoining Heritage from continuing to violate the applicable standard or limitation. In response to USPIRG’s accusations, Heritage filed a motion to dismiss under the theory that USPIRG had failed to establish standing.

When the plaintiff is an association asserting rights on behalf of its members: (1) some members must have standing to sue in their own right; (2) the members’ interest in the suit must be germane to the organization’s purpose; and (3) the claim asserted and the relief requested must not require the individual participation of those members in the suit. Heritage conceded that USPIRG satisfied the second and third requirements, but argued USPIRG was unable to satisfy the first requirement. USPIRG claimed standing based on the experiences of three members who stated they were adversely affected by Heritage’s pollution of the Bay and its tributaries. The members each claimed they reduced or eliminated the amount of fish they consumed from the Bay or its tributaries because they were fearful of the effects of the pollution on the fish. Two of the members stated they stopped fishing in the area because of the pollutants in the water from Heritage, and feared the further depletion of wild salmon, which were already suffering from Heritage’s pollution.

The United States District Court for the District of Maine held USPIRG had established standing because the members had suffered injuries in fact traceable to the defendant’s activities, which were redressable through court action. Injury in fact was established, *inter alia*, because the members were not taking advantage of a “local food source that they would otherwise enjoy due, in large measure, to Heritage’s discharges.” The court also emphasized that environmental plaintiffs adequately allege injury in fact “when they aver that they use the affected area and are persons for whom the aesthetic and